

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**ETHEL HEARD,
Plaintiff,**

v.

Civil No. 2:09-cv-02003-JPM-tmp

**TIMOTHY GEITHNER, SECRETARY
OF THE TREASURY
Defendant.**

**DEFENDANT'S STATEMENT OF FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

The following material facts are not in genuine dispute:

1. In the years 2007 and 2008, the Plaintiff Ethel Heard was a Program Manager, IR-0310-DM, in the Centralized Case Processing Operation (CCP), Memphis Compliance Services, Small Business/Self Employed Division, Internal Revenue Service, in Memphis, Tennessee. (DE #1 - Complaint ¶ 6; Ex. 1 - Pl.'s Dep. 10- 11; Ex. 2- Standard Form 50)
2. The Plaintiff's position is also known as a Department Manager, IR-DM-0340-02, and depending on the duties, the position may be equivalent to a General Schedule (GS) 11, 12, or 13 position. (Ex. 3 - Pl.'s Program Manager/Department Manager Job Description)
3. In 2007, a span-of-control reduction was required in the number of Department Managers for the CCP Operation because of a reduction in the number of overall CCP staffing. (Ex. 4 - Decl. of Charlestine Hardy)(Ex. 5 - Acklin's Dep. 14-18)

4. In the years 2007 and 2008, Plaintiff's job title, series, and pay never changed from a IR-02 pay grade. (Ex. 1 - Pl.'s Dep. 11:19-24)
5. In April 2007, prior to the beginning of the Plaintiff's detail to the Hybrid Team, the teams assigned to Department No. 2 were divided between Department Managers, Carolyn Levy and Brad Benham. (Ex. 1 - Pl.'s Dep. 31)
6. At the conclusion of the Hybrid Team detail, the Plaintiff requested to remain in the CCP Operation after learning Department No. 2 would not be reassigned to her. (Ex. 1 - Pl.'s Dep. 55)(Ex. 6 - Fields' Dep. 42, 56)
7. From September 2007 until April 2008, Plaintiff was reassigned to manage the FORT team without any change to her job title, series, grade, or pay. (Ex. 1 - Pl.'s Dep. 70:24-71:5)
8. By December 2007, the Employment Section advised Patricia Fields that Plaintiff was ineligible for the series 512 FORT Manager position because she lacked specialized experience and the requisite 30 hours of accounting. (Ex. 7 - Decl. of Phyllis Harris)(Ex. 8 - Emails re temporary promotion, dated December 14, 2007 and December 19, 2007)
9. In 2007 and 2008, the Plaintiff was ineligible for the series 512 FORT Manager position because she lacked specialized experience and the requisite 30 hours of accounting. (Ex. 7 - Decl. of Phyllis Harris)(Ex. 8 - Emails re temporary promotion, dated December 14, 2007 and December 19, 2007).
10. Plaintiff made initial contact with an EEO Counselor regarding her age and gender discrimination claims on March 12, 2008. (DE# 1 - Complaint ¶ 11)
11. Plaintiff filed a formal EEO Complaint alleging age and gender discrimination on May 6,

2008. (Ex. 9 - EEO Complaint)

Respectfully submitted,

EDWARD L. STANTON, III

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CERTIFICATE OF SERVICE

I, Monica M. DeGraffenreaid, Assistant United States Attorney for the Western District of Tennessee, do hereby certify that a copy of the foregoing pleading was sent via the Court's electronic filing system or first class U.S. Postal mail to:

Florence M. Johnson
Counsel for Plaintiff
1374 Madison Avenue
Memphis, TN 38104.

This the 4th day of October, 2010.

s/ Monica M. DeGraffenreaid
Assistant United States Attorney